



ITEM NO. 16

## STAFF REPORT

DATE: JUNE 21, 2011  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: AMER JAKHER, P.E., PUBLIC WORKS & UTILITIES SERVICE DIRECTOR  
SUBJECT: PUBLIC HEARING FOR LLMD NO. 1 FISCAL YEAR 2011/2012

### RECOMMENDED ACTION

It is recommended that the City Council conduct a public hearing and approve and adopt two resolutions for the Landscape Lighting and Maintenance District No. 1 Fiscal Year 2011/2012. Those resolutions being; 1) Resolution approving the final engineer's report; and 2) Resolution approving and ordering the levy and collection of assessments for Fiscal Year 2011/2012.

It is recommended that the City Council award a maintenance service agreement to RP Landscape and Irrigation for LLMD No.1 landscape maintenance services in the amount of \$70,000.

### GOAL STATEMENT

The proposed action will support the City's goal to continue to maintain its landscaped areas within the community.

### BACKGROUND

In compliance with the *Landscape and Lighting Act of 1972, Part 2 of Division 15 of the Streets and Highways Code* of California, the City Council formed a Landscape and Lighting Maintenance Assessment District. Currently, there are two Landscape Lighting and Maintenance Districts (LLMD) within the City of Colton. Each District provides the services of maintaining lighting and landscaping for applicable facilities within its boundaries.

Within the LLMD No.1 there are five zones; Exhibit B depicts the locations of these zones. The levy for this district is determined by the benefit units each property type (residential, industrial or commercial) is assigned. A single family residence is used as the basic unit of assessment and is assessed an Equivalent Benefit Unit (EBU) of 1.00. In addition to the EBU, the other determining factor in establishing the assessment rate is the acreage of each parcel. The costs associated with maintaining the improvements within each zone are distributed to those parcels

within each zone of the District in proportion to the benefit received by those parcels. The improvements within the District include: turf, ground cover, street trees, irrigation systems, perimeter landscaping, slopes, open space, ornamental lighting systems and all necessary appurtenances. Only parcels that directly benefit from the improvements are assessed.

## ISSUES/ANALYSIS

On May 17, 2011, the public hearing date for the fiscal year 2011/2012 LLMD No.1 rates was set for June 21, 2011.

The Preliminary and Final Engineer's Reports for FY 2011/2012 were prepared by Wildan Financial Services and have been available at the City Clerk's Office. The fiscal year 2011/2012 budget does not reflect any levy changes to the five zones located within the District (Zones: 2, 3 La Loma Hills, 4, 5 and 8). All assessment rates within LLMD No. 1, with the exception of Zone 3 Annexation, which has an inflator of 3%, were established over 20 years ago and have not since been adjusted. As this District was created without an inflator to allow for inflationary increases, the rates cannot be adjusted to meet the service costs without balloting all parcels within each Zone. The attached fiscal year budget, Exhibit A, reflects an increase of \$6.22 for Zone 3 and no changes for the following zones: Zone 2, Zone 3 La Loma Hills, Zone 4, Zone 5 and Zone 8.

The revenues collected are used to fund cost associated with the maintenance within LLMD No. 1. Staff recommends approving the rates for the LLMD No. 1 to continue maintenance within the LLMD No. 1.

In June 2011, staff informally bid the LLMD No. 1 and No. 2 landscape maintenance services, following the City's Municipal Ordinance 0-12-03 Section 3.08.12; *informal bidding procedure of non-public projects*. The services to be provided are mowing, edging, trimming and pruning. To keep cost down staff bid the services on an hourly rate emphasizing full time work in the "peak seasons" (March thru September) and part-time or no hours during the "down season" (October thru March). Additionally, the City will also provide landscape maintenance services in-house allowing to control the hours and cost of a contracted landscaper. The total cost of the contract for Fiscal Year 2012 if approved will be awarded in the amount of \$70,000. Of that amount LLMD No. 1 would allocate \$50,000 and LLMD No. 2 would allocate \$20,000 for its share of services. Staff recommends retaining the services of the maintenance contractor that submitted the lowest bid and award the maintenance contract in the amount of \$70,000 for landscape service to RP Landscape and Irrigation Inc. The bids that were received by the City staff are as follows:

- |                                      |               |
|--------------------------------------|---------------|
| 1. RP Landscape and Irrigation, Inc. | \$ 16.40/hour |
| 2. EZ Sunnyday Landscape             | \$ 16.50/hour |
| 3. Stauffer's Landscape, Inc.        | \$ 18.00/hour |

## **FISCAL IMPACTS**

The Final Engineer's Report is on file in the Office of the City Clerk as prescribed by law and identifies the LLMD No. 1 operating budget for 2011/2012 to be \$309,665. This will not have an impact to the general fund as LLMD No. 1 revenue for FY 2011/2012 is estimated at \$319,692. Funds for the maintenance service contract will be funded by LLMD No. 1 professional service account 702-6150-6220-2350.

## **ALTERNATIVES**

1. Provide alternative direction to staff.

## **ATTACHMENTS**

1. Exhibit 'A' – FY 11/12 Budget
2. Exhibit 'B' – LLMD No. 1 Map
3. Exhibit 'C' - Agreement
4. Resolutions

## **Exhibit A**

## DISTRICT BUDGET

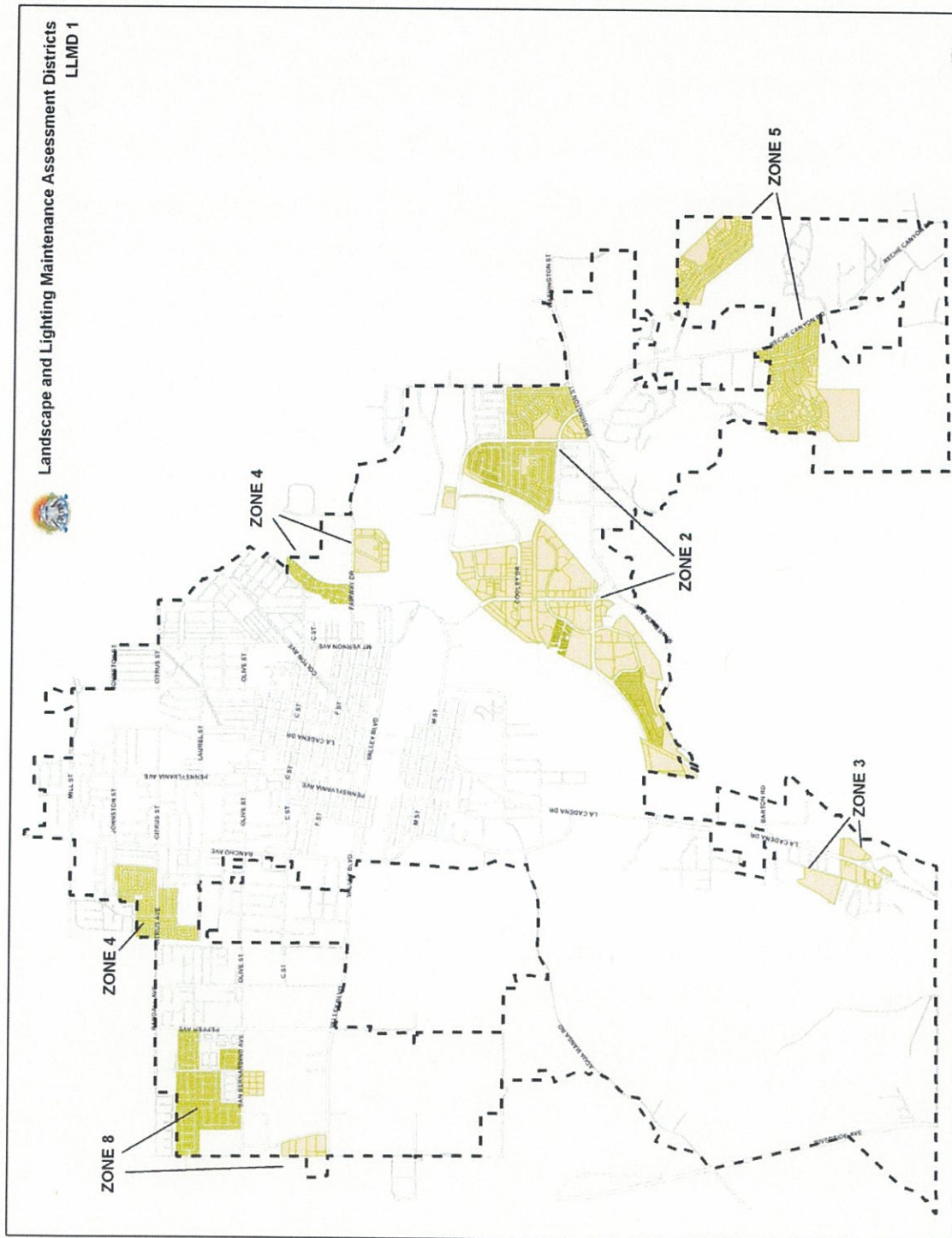
### FISCAL YEAR 2011/2012 BUDGET BY ZONE

Budget Items	Zone 2 Cooley Ranch	Zone 3 La Loma Hills	Zone 3 Annexation (1)	Zone 4 Old Colton	Zone 5 Reche Canyon	Zone 8 West Valley	Total Budget (2)
<b>DIRECT COSTS</b>							
Salaries and Wages	\$41,416	\$0	\$3,155	\$6,550	\$6,368	\$24,423	\$81,912
Fringe Benefits	17,858	0	1,360	2,824	2,746	10,531	35,320
Uniform & Safety Equipment	417	0	32	66	64	246	825
Vehicle Operating Expense	2,528	0	193	400	389	1,491	5,000
Miscellaneous Equipment Maintenance	2,528	0	193	400	389	1,491	5,000
Building and Grounds Maintenance	2,528	0	193	400	389	1,491	5,000
Utilities Expense	55,997	0	4,265	8,856	8,610	33,022	110,750
Operating Supplies/Equipment	1,264	0	96	200	194	745	2,500
Capital Equipment	0	0	0	0	0	0	0
Contract Services	28,776	0	2,192	4,551	4,375	17,020	56,914
<b>Total Direct Costs</b>	<b>\$153,312</b>	<b>\$0</b>	<b>\$11,677</b>	<b>\$24,247</b>	<b>\$23,524</b>	<b>\$90,461</b>	<b>\$303,221</b>
<b>ADMINISTRATION COSTS</b>							
Professional Service	\$0	\$0	\$0	\$0	\$0	\$0	\$0
County Per Parcel Fee (.30 per parcel)	0	0	0	0	0	0	0
Miscellaneous Administration Expenses	3,258	0	248	515	451	1,971	6,444
<b>Total Administration Costs</b>	<b>\$3,258</b>	<b>\$0</b>	<b>\$248</b>	<b>\$516</b>	<b>\$451</b>	<b>\$1,971</b>	<b>\$6,444</b>
<b>Total Direct and Administration Costs</b>	<b>\$156,570</b>	<b>\$0</b>	<b>\$11,926</b>	<b>\$24,763</b>	<b>\$23,975</b>	<b>\$92,433</b>	<b>\$309,665</b>
<b>LEVY ADJUSTMENTS</b>							
Reserve Replenishment (Contribution)	\$5,835	\$0	\$444	\$922	\$997	\$3,339	\$11,536
General Fund (Contribution)	0	0	0	0	0	0	0
Other Revenue Sources	0	0	0	0	0	0	0
<b>Total Levy Adjustments</b>	<b>\$5,835</b>	<b>\$0</b>	<b>\$444</b>	<b>\$922</b>	<b>\$997</b>	<b>\$3,339</b>	<b>\$11,536</b>
<b>Balance to Levy</b>	<b>\$162,405</b>	<b>\$0</b>	<b>\$12,370</b>	<b>\$25,685</b>	<b>\$24,972</b>	<b>\$95,772</b>	<b>\$321,203</b>
<b>DISTRICT STATISTICS</b>							
Total Parcels	1,267	3	75	470	468	845	3,128
Total Parcels Assessed	1,214	0	73	460	461	831	3,039
Total Equivalent Benefit Units (EBU)	3,074.68	0	56.20	456.54	467.12	917.53	4,972.07
Levy per EBU	\$52.82	\$0.00	\$220.10	\$56.26	\$53.46	\$104.38	N/A
<b>GENERAL INFORMATION</b>							
Maximum Levy	\$162,405	\$0	\$12,370	\$25,685	\$24,972	\$95,772	\$321,203
Maximum Levy per EBU	\$52.82	\$0.00	\$220.10	\$56.26	\$53.46	\$104.38	N/A
Prior Year's Levy per EBU	\$52.82	\$0.00	\$207.47	\$56.26	\$53.46	\$104.38	N/A
Beginning Reserve Balance as of July 1, 2011	\$300	\$0	\$0	\$11	\$14	\$102	\$427
Reserve Replenishment (Contribution)	5,835	0	444	922	997	3,339	11,536
Estimated Ending Reserve Balance	\$6,135	\$0	\$444	\$933	\$1,011	\$3,441	\$11,963

(1) The maximum assessment for Zone 3 is increased annually by 3%

(2) Slight variances due to rounding

## **Exhibit B**



## **Exhibit C**



**CITY OF COLTON  
AGREEMENT FOR MAINTENANCE SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 21st day of June, 2011 by and between the City of Colton, a municipal corporation of the State of California, located at 650 North La Cadena Drive, Colton, California 92324, County of San Bernardino, State of California, (hereinafter referred to as "City") and RP Landscape Irrigation Inc., a Corporation with its principal place of business at P.O. Box 1200, San Bernardino, Ca, 92407 (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Contractor.**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Landscape Maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

**2.2 Project.**

City desires to engage Contractor to render such services for the LLMD I and LLMD II Landscape Maintenance Service ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional landscape maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from July 1, 2011 to June 30, 2012, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Responsibilities of Contractor.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Amer Jakher P.E. Public Works/Utilities Services Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates Roy D. Perez, Owner, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9 Insurance.

3.2.9.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.9.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement

by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.9.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this

Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.9.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.9.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or

lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.2.12 Bonds.

3.2.12.1 Performance Bond. If specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without

limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.12.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Seventy Thousand Dollars and Zero Cents (\$70,000.00) without written approval of City's Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

#### **CONTRACTOR:**

RP Landscape and Irrigation  
P.O. Box 1200  
San Bernardino, a 92402  
Attn: Roy D Perez, Owner



**CITY:**

City of Colton  
650 North La Cadena Drive  
Colton, CA 92324  
Attn: Amer Jakher P.E.,  
Public Works/Utilities Service Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations,

understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON NEXT PAGE]**

**CITY OF COLTON**

**R.P. LANDSCAPE AND IRRIGATION**

By: \_\_\_\_\_  
David R. Zamora, Mayor

By: \_\_\_\_\_  
Roy, D. Perez, Owner

*Attest:*

\_\_\_\_\_  
Eileen C. Gomez, City Clerk

*Approved as to Form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

Risk Management

\_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF MAINTENANCE SERVICES**

Contractor shall perform the following to LLMD 1 and LLMD 2 specified areas as requested by staff:

- Mow
- Edge
- Trim
- Prune

**EXHIBIT "B"**  
**SCHEDULE OF MAINTENANCE SERVICES**

July 1, 2011 thru June 30, 2012

**EXHIBIT "C"**  
**COMPENSATION**

Contract amount shall not exceed \$70,000, and is based on hourly rates worked per man.

- Hourly rate per person: \$16.40



**RESOLUTION NO. R-58-11**

**A RESOLUTION OF THE CITY COUNCIL OF COLTON, CALIFORNIA  
AMENDING AND/OR APPROVING THE ANNUAL ENGINEER'S REPORT  
FOR THE COLTON LANDSCAPE AND LIGHTING MAINTENANCE  
DISTRICT NO. 1 FOR FISCAL YEAR 2011/2012.**

**WHEREAS**, the City of Colton ("City") is a municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California;

**WHEREAS**, the City Council of the City of Colton, California, has, by previous Resolutions, ordered the preparation of the Engineer's Annual Levy Report ("Engineer's Report") for the "Colton Landscape and Lighting Maintenance District No. 1" ("District") pursuant to the provisions of the *Landscaping and Lighting Act of 1972, Part 2 of Division 15 of the Streets and Highways Code of California, beginning with Section 22500* ("Act"); and,

**WHEREAS**, there has been presented to this City Council the Engineer's Report as required by *Chapter 3, Section 22623* of said Act as previously directed by Resolution; and,

**WHEREAS**, this City Council has carefully examined and reviewed the Engineer's Report as presented, and is satisfied with the District, each and all of the budget items and documents as set forth therein, and is satisfied that the assessments, have been spread in accordance with the special benefits received from the improvements, operation, maintenance and services to be performed within each Benefit Zone of the District, as set forth in said Engineer's Report.

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY  
THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**SECTION 1** The above recitals are true and correct.

**SECTION 2** The Engineer's Report as presented, consists of the following:

- A Description of the District and Improvements;
- The Annual Budget (Costs and Expenses of Services, Operations and Maintenance);
- A Description of the Method of Apportionment resulting in an Assessment Rate per Levy Unit within said District for Fiscal Year 2011/2012.
- District Assessment Diagrams showing the exterior boundaries of the Assessment District and/or the Benefit Zones therein.



RESOLUTION NO. R-59-11

**A RESOLUTION OF THE CITY COUNCIL OF COLTON, CALIFORNIA ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE COLTON LANDSCAPE AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 1 FOR FISCAL YEAR 2011/2012.**

**WHEREAS**, the City of Colton ("City") is a municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California;

**WHEREAS**, the City Council of the City of Colton, California, has, by previous Resolutions, initiated proceedings for the Colton Landscape and Lighting Maintenance Assessment District No. 1 ("District"), declared its intention to levy assessments for Fiscal Year 2011/2012, and approved the Engineer's Annual Levy Report ("Engineer's Report") that describes the assessments against parcels of land within for the Fiscal Year commencing July 1, 2011 and ending June 30, 2012 pursuant to the provisions of the *Landscaping and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code, (commencing with Section 22500)* ("Act") to pay for the maintenance and services of improvements and facilities related thereto; and,

**WHEREAS**, the Engineer's Report has been prepared and filed with the City Clerk, and the City Clerk has presented to the City Council said Engineer's Report in connection with the proposed levy and collection of assessments upon eligible parcels of land within the District and the City Council did by previous Resolution approve such Engineer's Report; and,

**WHEREAS**, the City Council desires to levy and collect assessments against parcels of land within the District for the Fiscal Year commencing July 1, 2011, and ending June 30, 2012, to pay for the maintenance and services of improvements and facilities related thereto.

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**SECTION 1** Following notice duly given, the City Council has held a full and fair public hearing regarding the District, the levy and collection of assessments, the Engineer's Report prepared in connection therewith, and considered oral and written statements, protests and communications made or filed by interested persons regarding these matters.

1       **SECTION 2** Based upon its review of the Engineer's Report (and amendments, as  
2 applicable), the City Council hereby finds and determines that:

- 3       • The land parcels within the District will be benefited by the operation, maintenance  
4       and servicing of the improvements located within the boundaries of the District; and,
- 5       • The District includes the parcels of land so benefited; and,
- 6       • The net amount to be assessed upon the parcels of land within the District for the  
7       Fiscal Year commencing July 1, 2011 and ending June 30, 2012 is apportioned by a  
8       formula and method which fairly distributes the net amount among eligible parcels in  
9       proportion to the estimated special benefits to be received by each parcel from the  
10      improvements and services.

11       **SECTION 3** The Engineer's Report and assessments as presented to the City  
12 Council and on file in the Office of the City Clerk are hereby confirmed as filed.

13       **SECTION 4** The maintenance, operation and servicing of the improvements shall be  
14 performed pursuant to the Act. The City Council hereby orders the proposed improvements to  
15 be made and maintained as set forth in the Engineer's Report.

16       **SECTION 5** The City Council has maintained Willdan Financial Services for the  
17 purpose of assisting with the Annual Levy of the District, and is hereby authorized and directed  
18 to file the levy with the County Auditor upon adoption of this Resolution, pursuant to *Chapter*  
19 *4, Article 1, Section 22641* of the Act.

20       **SECTION 6** The County Auditor of the County of San Bernardino shall enter on the  
21 County Assessment Roll opposite each eligible parcel of land the amount of levy so  
22 apportioned by the formula and method outlined in the Engineer's Report, and such levies  
23 shall be collected at the same time and in the same manner as the County taxes are collected,  
24 pursuant to *Chapter 4, Article 2, Section 22646* of the Act. After collection by the County, the  
25 net amount of the levy shall be paid to the City Treasurer.

26       **SECTION 7** The City Treasurer shall deposit money representing assessments  
27 collected by the County for the District to the credit of a fund for the City of Colton Landscape  
28 and Lighting Maintenance District No. 1, and such money shall be expended only for the  
maintenance, operation and servicing of the improvements described in the Engineer's Report.

29       ///

30       ///

31       ///

**SECTION 8** The adoption of this Resolution constitutes the District levy for the Fiscal Year commencing July 1, 2011 and ending June 30, 2012.

**PASSED, APPROVED AND ADOPTED** this 21<sup>st</sup> day of June 2011.

DAVID R. ZAMORA  
Mayor

ATTEST:

EILEEN C. GOMEZ, CMC  
City Clerk